

### REMARKS

Claims 1-3, 5, 8, 26-30, 32-38, and 41-52 are currently pending. Claims 24-25 and 39-40 have been withdrawn. Claims 1, 26, 37-38, 43-45, and 50 have been amended and claims 51-52 are new. These amendments and new claims find support in previously submitted claims 1-3, 24, and 26, paragraphs 1, 11, and 38 of the specification as filed, and figures 1-4.

The Examiner has rejected claims 1-3, 5, 8, 26-27, 30, 32-38, and 41-50 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication No. 2003/0065333 to DeMayo. The Examiner argues that Demayo discloses a bone or cartilage implant delivery device having all of the elements of claims 1, 26, 30, 37-38, and 41-50.

Applicants respectfully disagree. Specifically, claims 1, 26, 37, 38, and 50 have been amended to specify that the friction member has a diameter such that the friction member engages an inner surface of the outer shaft to provide friction-retarded movement of the inner shaft through the outer shaft. The flange 19 of Demayo's tool, which the Examiner equates to the friction member of Applicants' device, is of a diameter such that it would not fit within the bore of the outer cylinder 11, which the Examiner equates to the outer shaft of Applicants' device, to provide engagement with the inner surface of the outer cylinder 11 and thus friction-retarded movement of the carrier cylinder 12, which the Examiner equates to the inner shaft of Applicants' device, through the outer cylinder 11.

Additionally, claims 30 and 41-50 all specify features and qualities of the implant that differentiate it from the bone graft material of DeMayo. Claims 30, 42, 43, 46, and 49 all specify that the implant is solid or has a solid body and claims 41, 44-45, and 47-48 all specify that the implant has a body with closed ended proximal and distal ends. DeMayo does not disclose any of these limitations. Rather, DeMayo only discloses the use of a bone graft insert paste material with the tool. Therefore, claims 1, 26, 30, 37-38, and 41-50 are in condition for allowance and since claims 2-3, 5, 8, 27, and 32-36 depend either directly or indirectly from amended claims 1, 26, and 30, these claims are also in condition for allowance. It is respectfully requested that claims 1-3, 5, 8, 26-27, 30, 32-38, and 41-50 be allowed.

The Examiner has rejected claim 28 under 35 U.S.C. 103(a) as being unpatentable over DeMayo in view of US Patent No. 6,302,887 issued to Spranza et al. The Spranza reference fails to cure the previously described deficiency of the DeMayo reference with respect to claim 26. Therefore, the combination of the DeMayo and Spranza references fails to teach all of the

limitations of claim 26, from which claim 28 depends. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 28.

The Examiner has rejected claim 29 under 35 U.S.C. 103(a) as being unpatentable over DeMayo in view of US Publication No. 2003/0065333 to Smith et al. The Smith reference fails to cure the previously described deficiency of the DeMayo reference with respect to claim 26. Therefore, the combination of the DeMayo and Smith references fails to teach all of the limitations of claim 26, from which claim 29 depends. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 29.

Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants may have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application.

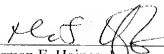
The absence of an explicit response by the Applicants to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that Applicants comments have focused on particular arguments does not constitute a concession that there are not other good arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

Please apply any charges or credits to Deposit Account No. 192563.

Respectfully submitted,

Date:

12/16/09

  
\_\_\_\_\_  
Norman F. Hainer, Jr.  
Reg. No. 55,239

Smith & Nephew, Inc.  
150 Minuteman Road  
Andover, MA 01810  
Telephone: 978-749-1311  
Facsimile: 978-684-6417